(1) 001797 MAY 25 2001

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

ANTHONY E. RAMOS,

Petitioner,

v.

SUPREME COURT OF FLORIDA and
THE FLORIDA BAR,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI

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40 pp

QUESTIONS PRESENTED

Whether the Due Process Clause requires an opportunity to be heard in disbarment proceedings when the disciplined attorney has presented newly discovered evidence on the issue of whether there was an intentional violation of the Rules Regulating Professional Conduct, and on the issue of the severity of punishment.

Whether the Due Process Clause requires that an attorney be given a chance to respond to a default entered outside his presence, and an opportunity to respond to a referee's report before a final order of disbarment, especially where there is a previous agreement to a voluntary resignation in lieu of other punishment.

LIST OF PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, pursuant to Rule 28.2 Petitioner identifies the following parties which may have an interest in the outcome of the petition: Honorable Howard Harrison, Richard B. Liss, Esq., and Kevin P. Tynan, Esq.

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The Florida Bar v. Anthony E. Ramos, Case No. SC 89797, Order of December 18, 1997

The Florida Bar v. Anthony E. Ramos, Case Nos. SC 89797, SC 91562, and SC 91564, Order Denying New Trial, dated December 20, 2000

The Florida Bar v. Anthony E. Ramos, Case Nos. SC 89797, SC 91562, and SC 91564, Order Denying Rehearing, dated February 28, 2001

JURISDICTION

The judgment of the Florida Supreme Court was entered on December 18, 1997. Petitions for new trial were denied on December 20, 2000. Petitions for rehearing on the new trial issues were denied on February 28, 2001. The judgment regarding new trial became final February 28, 2001. The judgment regarding new trial became final February 28, 2001, pursuant to Florida Supreme Court rules. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

As detailed below, there is cause for this Court to review the Florida Supreme Court's decision in *Florida Bar v. Anthony Ramos*, Case Nos. SC89797, SC91562, and SC91564, because the Florida Supreme Court's decision not to grant a new trial in the attorney disciplinary proceedings, which resulted in a twenty (20) year disbarment, on the ground that there was newly discovered material evidence that would have affected the disbarment, does not comport with rudimentary concepts of due process. Further, the Florida Supreme Court's refusal to recognize Petitioner's voluntary resignation, pursuant to negotiated terms, and then to impose the final order of disbarment based on a referee's report that Petitioner did not have an opportunity to contest, after an entry of default without Petitioner's knowledge, and without Petitioner's presence at the final disciplinary hearing, also violates the Due Process Clause.

A. The Facts of this Case.

Petitioner is an attorney who was licensed to practice law in the State of Florida, on or about April 2, 1981. Petitioner was employed in the area of personal injury litigation in his own firm at the time the Florida Bar filed a formal complaint on or about January 28, 1997. As required by Florida law, the complaint was filed with the Florida Supreme Court, and it alleged more than a dozen trust account violations. The investigation began after one of Petitioner's employees left the firm in June 1995,

and reported the alleged trust account violations. Petitioner maintained that the employee had actually embezzled from his trust account, for her personal use, by forging his signature on trust account checks. A referee, who was a judge, was appointed to preside over the disciplinary action at the local level, pursuant to an order from the Florida Supreme Court.

The Florida Bar is charged with accepting and investigating complaints of attorney misconduct. While the Bar may initial the formal complaint and a referee may make recommendations as to the findings of facts and discipline, the Florida Supreme Court has the ultimate responsibility to determine the appropriate sanction. However, in reviewing a referee's factual determinations in attorney disciplinary hearings, the Florida Supreme Court has recognized that its role is not to reweigh the evidence and substitute its view of the credibility of the witnesses. Accordingly, the Florida Supreme Court gives deference to a referee's findings of fact.

Petitioner was temporarily suspended from the practice of law as the Florida Bar investigation lasted over a year. The disciplinary action against Petitioner was commenced in three separate cases filed with the Florida Supreme Court referenced herein, which were later consolidated. The Florida Supreme Court entered a final order of disbarment with permission to reapply after twenty (20) years on December 17, 1997. However, there were additional trust account disciplinary cases, which were consolidated into one case where an accountant was appointed, and where Petitioner made final payment, with interest, to all affected parties, based on the accounting. Those funds were disbursed by order on January 17,

2001. Petitioner cooperated completely with the post-disbarment disbursement plan. Petitioner was also criminally prosecuted for grand theft and organized scheme to defraud, but a jury was deadlocked. It was during proceedings after the disbarment that Petitioner obtained new evidence tending to exculpate him in the underlying proceedings.

In the underlying disbarment action, there was a series of procedural errors that deprived Petitioner of due process. First, on March 27, 1997, Petitioner filed a motion for extension of time to file a responsive pleading to the Florida Bar's complaint. The Florida Bar objected to the extension of time, and thereafter filed a motion for default. The referee withdrew the motion for default on or about May 6, 1997, because Petitioner filed a responsive pleading, which was Petitioner's motion to dismiss the disciplinary proceeding. Despite that motion, the Florida Bar again filed a motion for default, which was denied on June 17, 1997, along with Petitioner's motion to dismiss. Petitioner had argued that there was no evidence of Petitioner's direct involvement in the alleged trust account violations. Once that motion was denied, Petitioner appealed the denial to the Florida Supreme Court, which dismissed the appeal on or about September 22, 1997. Petitioner was thereafter directed, through his counsel, to file an answer by September 30, 1997, to the disciplinary complaint. Because of mis-communication between Petitioner and his counsel, no answer was filed and the referee granted the Florida Bar's renewed motion for default during a telephonic hearing on October 29, 1997, where Petitioner was not present. Thus, the referee entered judgment of liability on the underlying complaint without giving Petitioner a meaningful opportunity to

respond. Although Petitioner's counsel was present at that hearing, he represented that he had not communicated with Petitioner and that he wanted to withdraw from the case, but the referee would not grant his motion to withdraw. However, at that same hearing, the Florida Bar attorneys agreed that Petitioner could voluntarily resign for a period of five (5) years, and the referee also agreed that such a resignation would be appropriate as a disciplinary sanction. Petitioner had earlier prepared a letter of voluntary resignation of five (5) years.

Nevertheless, despite the resignation letter and the Florida Bar's acquiescence to it, a final hearing on the appropriate disciplinary sanction was scheduled for November 10, 1997, but Petitioner did not have notice of the hearing and his attorney, who had moved to withdraw, did not appear at the hearing. Based on Petitioner's non-appearance, the referee assumed that Petitioner "chose not to appear or be represented by counsel." The referee acknowledged Petitioner's voluntary resignation letter in his final report, but dismissed it as a legal nullity under Florida law, despite his earlier assertions at the October 17, 1997 hearing, that the resignation would be acceptable. The referee's report, dated November 12, 1997, found that based on the totality of the circumstances presented, he was "compelled to conclude that an enhanced disbarment for a period of twenty (20) years was the appropriate disciplinary sanction to recommend." The referee cited several Florida cases on the type of attorney discipline, but the majority of them were for one, two, five or ten year suspensions, and the referee never compared Petitioner's case to any other Florida case upholding a twenty (20) year suspension. At the

time, Petitioner did not receive notice of the referee's report.

Accepting the referee's report as true, and without input from Petitioner or his counsel, the Florida Supreme Court on December 18, 1997, disbarred Petitioner without the ability to apply for readmission for a period of twenty (20) years. The order stated that: "[t]he uncontested report of the referee is approved and respondent is disbarred effective immediately." App. 4-5.

Subsequent to the disbarment proceedings relating to liability *vel non* of Petitioner, Petitioner commenced litigation against the Florida Bar concerning payments to claimants to the trust account proceedings. This litigation lasted from January 1998 to January 2000. Petitioner convinced the Florida Supreme Court that a full evidentiary hearing before a referee would provide fair, and full compensation, plus interest, to all claimants. It was during these evidentiary hearings that Petitioner also learned of new evidence that tended to show that he did not intend to violate trust account provisions. Accordingly, Petitioner filed a motion for new trial with the Florida Supreme Court, in all three consolidated cases, on the ground that during the other proceedings involving disbursements, Petitioner learned of new evidence that would tend to exculpate him and would bear on the nature of punishment. First, Petitioner alleged newly discovered prosecutorial misconduct sufficient to undermine the integrity of the disciplinary trial. The misconduct included the use of false testimony. For example, one complainant had testified at the disciplinary trial that Petitioner had forged her settlement check. However, unknown to Petitioner at the time, the complainant was

promised full reimbursement of settlement proceeds (unlike other complainants) in exchange for the testimony. Petitioner alleged that had he known of the secret agreement between the complainant and the Florida Bar, he could have conducted effective cross-examination that would have altered the outcome of the disciplinary trial.

Second, another complainant testified at the disciplinary trial that he had not authorized Petitioner to file a personal injury lawsuit, or to settle the same. However, the Florida Bar failed to disclose that there was actually a signed agreement between Petitioner and the complainant which gave Petitioner authority to "prosecute said action either in my name, or your name as you see fit and further authorize you to compromise, settle or otherwise resolve said claim as you see fit."

Third, another complainant testified at the disciplinary trial that he had not authorized Petitioner to settle an automobile accident case. However, the Florida Bar failed to produce evidence that, as a result of the same accident case, the complainant was being investigated for insurance fraud because of a claim for Social Security benefits for pre-existing back injuries. Further, the Florida Bar failed to disclose previous evidentiary hearings involving the complainant where another judge ordered that the settlement was valid. The Florida Bar, unknown to Petitioner, had promised to assist the complainant with his insurance fraud investigation in exchange for his testimony.

Finally, Petitioner alleged in the motion for new trial that the Florida Bar staff auditor, who was charged with the audit of Petitioner's bank accounts, had testified

falsely at the disciplinary trial that Petitioner had received an additional $6,000.00 for settlement in another complainant's case. However, Petitioner learned through subsequent disciplinary proceedings involving that complainant that, in fact, this was a mistake on the part of the staff auditor. Had Petitioner know this fact, he would have been able to properly cross-examine the auditor and been able to present sufficient evidence for mitigation of punishment. This evidence was particularly significant, in that it involved the only instance where the referee was led to believe that Petitioner had directly taken funds from a client. Each of these incidents were included in the referee's report submitted to the Florida Supreme Court and served, in part, as the basis for the twenty year disbarment. App. 11-17.

Although Petitioner vigorously pursued his motion for new trial, by filing several motions over a nine month period, the Florida Supreme Court summarily denied Petitioner's motion for new trial, motion for leave to conduct discovery, and motion for reappointment of a referee, on or about December 20, 2000. App. 1. There was no reason stated for the denial. Nor was there a particular procedural or evidentiary rule by which Petitioner could demand the new trial in the scope of the disciplinary proceeding. Thus, Petitioner had no mechanism to re-open discovery. Petitioner also filed a motion for rehearing on the same grounds as the motion for new trial, because an order of the Florida Supreme Court is not final until the time for rehearing had passed. On February 28, 2001, the Florida Supreme Court denied Petitioner's request for rehearing on the motions. App. 10. Again, there was no reason stated for the denial. The

Florida Supreme Court also denied Petitioner's request for oral argument. This appeal was timely filed pursuant to Supreme Court Rules.

REASONS FOR GRANTING THE WRIT

Petitioner argues that there exists a "compelling reason" warranting review of the state court decision in the three consolidated cases of *Florida Bar v. Anthony Ramos*, because the Florida Supreme Court has decided an important federal question in a way that conflicts with decisions of the United States Supreme Court in the area of due process. In particular, because disbarment proceedings are of a quasi-criminal nature, a lawyer who is being disbarred must be given fair notice of the grievance procedure and an opportunity to respond. *In re: Ruffalo*, 390 U.S. 544 (1968). In this case, the Florida Supreme Court summarily disbarred Petitioner without an opportunity to contest the referee's report on the matter, upon a default motion, and without Petitioner's presence at the final hearing on discipline, and after there was a negotiated agreement to a five year voluntary resignation. Further, because of the quasi-criminal nature of bar proceedings, Petitioner should have been afforded a new trial because of newly discovered evidence that was both exculpatory and material to the issue of liability and punishment. The lack of procedural rules in Florida for such quasi-criminal proceedings per se violates due process.

POINT I: The Due Process Clause requires an opportunity to be heard in disbarment

> proceedings when the disciplined attorney has presented newly discovered evidence on the issue of whether there was an intentional violation of the Rules Regulating Professional Conduct, and on the issue of the severity of punishment.

In Florida, the responsibility for disbarring, suspending or otherwise disciplining lawyers who are admitted to practice rests with the Supreme Court alone. *The Florida Bar v. McCain*, 330 So.2d 712 (1976). Under Florida law, consideration that should go into an order of discipline is that the discipline should be fair to both the public and the attorney, with an object of correcting the wayward tendency in the accused lawyer while offering to him a fair and reasonable opportunity for rehabilitation. *The Florida Bar v. MacKenzie*, 319 So.2d 9 (1975). Although a license to practice law endows a holder with a conditional privilege and not a vested right, the license has characteristics of property which should not be withdrawn by a governing authority without the proper application of traditional concepts of due process. *The Florida Bar v. Fussell*, 179 So.2d 852 (1965).

Unfortunately, Florida has not adopted formal rules of procedure to govern the quasi-criminal nature of disciplinary proceedings, nor are there rules regarding newly discovered evidence for disciplinary proceedings. Hence, an attorney is subject to either the procedural whims of the referee, or where no referee is appointed, the procedural whims of the Florida Supreme Court.

Further, "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," due process guarantees must

scrupulously be observed. *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). See also *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972) (same with respect to "any charge . . . that might seriously damage [a person's] standing and associations in his community"); *Paul v. Davis*, 424 U.S. 693, 722-723 (1976) (BRENNAN, J., dissenting) ("[T]he enjoyment of one's good name and reputation has been recognized repeatedly in our cases as being among the most cherished of rights enjoyed by a free people, and therefore as falling within the concept of personal 'liberty' ").

Therefore, under the Due Process Clause, "reasonable notice" must include disclosure of "the specific issues [the party] must meet," *In re Gault*, 387 U.S. 1, 33-34 (1967), and appraisal of "the factual material on which the agency relies for decision so that he may rebut it," *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 288, n. 4 (1974). These guarantees apply fully to attorney disciplinary proceedings because, obviously, "lawyers also enjoy first-class citizenship." *Spevack v. Klein*, 385 U.S. 511, 516 (1967). Hence, where there is an "absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges," so that the attorney is not given a meaningful opportunity to present evidence in his defense, the proceedings violate due process. *In re Ruffalo*, 390 U.S. 544, 552 (1968).

In this case, the Florida Supreme Court, by ignoring Petitioner's repeated requests for new trial on the issue of newly discovered material evidence, ignored rudimentary concepts of due process aimed to give Petitioner a meaningful opportunity to present evidence. The sort of procedure employed by the Florida Supreme Court, in

not adopting safeguard provisions for post-trial evidentiary issues (or any evidentiary procedures whatsoever), completely ignores the objectives of due process and therefore did not give Petitioner a meaningful "chance to be heard in a trial of the issues," *Cole v. Arkansas*, 333 U.S. 196, 201 (1948), and instead made a mockery of the due process of law that is guaranteed every citizen accused of any type of wrongdoing.

In particular, Petitioner had a good faith basis to present newly discovered evidence to the Florida Supreme Court. The Court refused to appoint a referee and refused to grant oral argument on the issue. Further, the Court would not even issue an opinion, and waited nine (9) months to summarily deny the motion for new trial. The concept of granting new trials on the basis of newly discovered evidence is not a strange concept to the Court. Indeed, 28 U.S.C. § 2255 allows a second or successive motion if there is "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense." Federal district courts have broad discretion in deciding whether to hold an evidentiary hearing on a motion for a new trial based on newly discovered evidence. *United States v. Begnaud*, 848 F.2d 111, 113-15 (8th Cir.1988), and there are particular cases in which an evidentiary hearing should be held, especially where serious prosecutorial misconduct is alleged, as in this case.

Federal Rule of Civil Procedure 60(b) contemplates that if there is newly discovered evidence which by due diligence could not have been discovered, then a federal

court may relieve a party from a final judgment, order, or proceeding. *United States v. Beggerly*, 118 S. Ct. 1862 (1998). Thus, it is this Court's inherent judicial power which gives it the authority to recall a mandate in order to correct error. *Hawaii Housing Authority v. Midkiff*, 463 U.S. 1323, 1324 (1983).

The nature of Petitioner's request to the Florida Supreme Court was not simply a request for another chance at a disciplinary hearing. Rather, Petitioner discovered evidence that would tend to show that he did not deceive or defraud his clients in disbursements of trust account proceedings, and that the testimony of several clients was tainted by special favors from the Florida Bar attorneys. In essence, Petitioner alleged prosecutorial misconduct of the kind and nature that would warrant a new trial. This went to the heart of Petitioner's defense, as he had claimed that it was the former paralegal who embezzled the funds from his trust account.

A prosecutor's affirmative duty to disclose evidence favorable to one accused traces its origin to early 20th century strictures against misrepresentation and is most prominently associated with this Court's decision in *Brady v. Maryland*, 373 U.S. 83, 87 (1983), which held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material ***either to guilt or punishment***, irrespective of the good faith or bad faith of the prosecution." (emphasis added). Further, as in this case, the "knowing use of perjured testimony is fundamentally unfair, and [the conviction] must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgement." *United States v. Agurs*, 427

U.S. 97, 103 (1976). And, favorable evidence is material, and constitutional error results from its suppression by the government, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985). Hence, any proceeding that is tainted by constitutional error must be set aside unless the error complained of was "harmless beyond a reasonable doubt." *Chapman v. California*, 386 U.S. 18, 24 (1967).

In this case, there is a reasonable probability that the evidence of the Florida Bar's special favors given to witnesses at the disciplinary trial would have affected the outcome of the trial. Indeed, Petitioner was disbarred for twenty (20) years, based in part on the witness' testimony that was presented by the Florida Bar attorneys. The disclosure of the newly discovered evidence would have created a different result, and would have cast further doubt on Petitioner's culpability. *Kyles v. Whitley*, 115 S. Ct. 1555 (1995). Petitioner should not be faulted for not discovering the Florida Bar's misrepresentations or omissions at the disciplinary proceeding.

Finally, it should be noted that one issue in the disciplinary proceeding involved whether Petitioner had actually signed trust account checks, or whether the signatures were forged. Petitioner learned during his criminal trial that the Florida Department of Law Enforcement could not match the signatures on the checks to examinations of previous signatures done by Petitioner. Petitioner should have been given the opportunity to present this evidence during the disciplinary

trial, to show that there was no intentional violation of trust account rules.

Accordingly, the Due Process Clause warrants that Petitioner be able to present the newly discovered evidence to the tribunal for fair adjudication of his disbarment and the resulting punishment. The Florida Supreme Court and the Florida Bar should be ordered to show cause why Petitioner is not entitled to a fair hearing on the newly discovered evidence.

POINT II: The Due Process Clause requires that an attorney be given a chance to respond to a default entered outside his presence, and an opportunity to respond to a referee's report before a final order of disbarment, especially where there is agreement to a voluntary resignation in lieu of other punishment.

Petitioner (through his counsel) and the Florida Bar attorneys had reached agreement on or about October 17, 1997, that Petitioner could enter a voluntary resignation for five (5) years. On that same date, the referee entered a default judgment against Petitioner, which ultimately led to his disbarment. The Florida Supreme Court disbarred Petitioner for twenty (20) years on or about December 18, 1997, after accepting the report of the referee. App. 4-5. The report was uncontested, and Petitioner was not present during the final hearing. Certainly an attorney deserves an opportunity to be heard before a deprivation occurs, especially one that is to last for twenty (20) years.

When considering what procedures the Due Process Clause requires before the government may deprive individuals of their liberty or property interests, this Court

balances three factors: the private interest at stake; the risk of erroneous deprivations of that interest created by the procedures used, and the probable value of additional procedural safeguards; and the government's interest. See, e.g., *Gilbert v. Homar*, 117 S. Ct. 1807, 1812 (1997). In this case, Petitioner does not dispute that the government ought to regulate attorney misconduct, and prosecute misconduct vigorously. However, Petitioner's disbarment was devoid of due process because of the procedural complexities of the erroneously entered default judgment (which was done at the same time Petitioner's counsel attempted to withdraw from his case), the resulting disciplinary hearing where Petitioner was absent, and the utter lack of evidence that Petitioner knew about any of these proceedings. In essence, the Florida Supreme Court disbarred Petitioner for 20 years after adopting a referee's report that Petitioner could not respond to, after relying on a final disciplinary hearing where Petitioner was not present, and after accepting a default judgment entered without notice to Petitioner. The Florida Bar should be required to show that it gave Petitioner a meaningful opportunity to respond before the granting of the default judgment, before the final hearing was held, before the referee's report was issued, and certainly before the final order of disbarment was issued. The Florida Supreme Court should also be held to a high standard of due process, and not be allowed to make a mockery of the due process of law that is guaranteed every citizen, even attorneys, accused of any type of wrongdoing. The Florida Supreme Court itself acknowledged that the referee's report was uncontested, yet it still entered the final order

without reservation. The "taking" of the livelihood of an attorney should be done with more caution.

CONCLUSION

For the reasons given above, the petition should be granted because the case is unique and involves important due process concerns unique to the regulation of attorneys and the procedures used to discipline them.

Respectfully submitted,

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Supreme Court of Florida

WEDNESDAY, DECEMBER 20, 2000

THE FLORIDA BAR, Complainant,	*	CASE NO. SC91562
vs.	*	
ANTHONY ELADIO RAMOS, Respondent.	*	

****

ORDER

Upon consideration, Respondent's Motion for New Trial, Motion for Leave to Conduct Discovery, Motion for Reappointment of the Referee and Request for Oral Argument on the Motion for Reappointment of the Referee are hereby denied. The Florida Bar's Motion to Strike is hereby denied.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

A True Copy

TEST:

/s/ Thomas D. Hall
Thomas D. Hall
Clerk, Supreme Court [SEAL]

BHP

cc: Mr. John Anthony Boggs
Mr. Anthony E. Ramos
Mr. David M. Barnovitz

Supreme Court of Florida

WEDNESDAY, JANUARY 17, 2001

THE FLORIDA BAR, Complainant,	*	CASE NO. SC86452
vs.	*	
ANTHONY ELADIO RAMOS, Respondent.	*	

ORDER

The referee in this cause has submitted a report of referee which distributes funds of former clients of the Respondent. This uncontested report of referee is hereby approved with the following exceptions. Following the disbursing agent's disbursement of funds and once all checks remitting funds to the claimants have cleared, the disbursing agent shall render a final report to the referee, the Respondent, The Florida Bar, and this Court. This report shall include a provision indicating the amount of interest paid to each claimant, and a certification that all interest due has been paid prior to any funds being remitted to Respondent. This report shall be provided to the Respondent, the referee, The Florida Bar, and this court.

Respondent's Motion for Oral Argument is hereby denied.

It is so ordered.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

A True Copy

TEST:

/s/ Thomas D. Hall
Thomas D. Hall
Clerk, Supreme Court [SEAL]

BHP
cc: Hon. Howard H. Harrison, Jr.,
Judge
Anthony Eladio Ramos
David M. Barnovitz
John Anthony Boggs
Paul A. Baltrun
Charles F. Kline
Miguel A. Mendez
Steven Halverson
William M. Luongo
Patrick J. Malone

Supreme Court of Florida

THURSDAY, DECEMBER 18, 1997

THE FLORIDA BAR, Complainant,	*	CASE NO. 89,797
v.	*	
ANTHONY ELADIO RAMOS, Respondent.	*	

****

The uncontested report of the referee is approved and respondent is disbarred effective immediately. No application for readmission to The Florida Bar will be permitted for a period of twenty (20) years. Respondent is also ordered to make restitution as stated in the referee's report.

Judgment for costs in the amount of $34,59.76 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined. *The filing of a motion for rehearing shall not alter the effective date of this disbarment.*

A True Copy

TEST:

/s/ Sid J. White
Sid J. White
Clerk, Supreme Court [SEAL]

KB
cc: Hon. Howard H. Harrison, Referee
Mr. Robert V. Romani
Mr. Richard M. Benrubi
Mr. John A. Boggs
Mr. Richard B. Liss
Mr. Kevin P. Tynan
Mr. Charles F. Kline
Mr. Anthony E. Ramos

Supreme Court of Florida

THURSDAY, JUNE 11, 1998

THE FLORIDA BAR, Complainant,	*	CASE NO. 91,562
v.	*	
ANTHONY ELADIO RAMOS, Respondent.	*	

****

Respondent having failed to file his brief, the Petition for Review is dismissed and the report of the referee is approved.

Respondent is disbarred effective, nunc pro tunc, December 18, 1997, to run concurrent with the disbarment entered in Case No. 89,797.

Respondent is further directed to comply with all other terms and conditions set forth in the report.

Judgment for costs in the amount of $1,741.84 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined. *The filing of a motion for rehearing shall not alter the effective date of this disbarment.*

A True Copy

TEST:

/s/ Sid J. White
Sid J. White
Clerk, Supreme Court [SEAL]

KBB

cc: Hon. Howard H. Harrison, Jr., Referee
Mr. Richard M. Benrubi
Mr. Jerald S. Beer
Mr. John A. Boggs
Mr. Richard Liss
Mr. Kevin P. Tynan
Mr. Anthony Eladio Ramos

Supreme Court of Florida

THURSDAY, JUNE 11, 1998

THE FLORIDA BAR, Complainant,	*	CASE NO. 91,564
v.	*	
ANTHONY ELADIO RAMOS, Respondent.	*	

****

Respondent having failed to file his brief, the Petition for Review is dismissed and the report of the referee is approved.

Respondent is disbarred effective, nunc pro tunc, December 18, 1997, to run concurrent with the disbarment entered in Case No. 89,797.

Respondent is further directed to comply with all other terms and conditions set forth in the report.

Judgment for costs in the amount of $847.16 is entered against respondent for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined. *The filing of a motion for rehearing shall not alter the effective date of this disbarment.*

A True Copy

TEST:

/s/ Sid J. White
Sid J. White
Clerk, Supreme Court [SEAL]

KBB

cc: Hon. Howard H. Harrison, Jr., Referee
Ms. Amy L. Smith
Mr. Jerald S. Beer
Mr. John A. Boggs
Mr. Richard Liss
Mr. Kevin P. Tynan
Mr. Anthony Eladio Ramos

Supreme Court of Florida

WEDNESDAY, FEBRUARY 28, 2001

CASE NO.: SC89797
SC91562
SC91564

Lower Tribunal No.: 95-50681(15C), ETC.
97-50964(15C)
97-51171(15C)
98-50034(15C)

THE FLORIDA BAR vs. ANTHONY ELADIO RAMOS

Petitioner(s) Respondent(s)

Respondent's Motion for Rehearing, Motion for Clarification of Order Dated December 20, 2000, and Motion to Strike Order Dated December 20, 2000 are hereby denied.

WELLS, C.J., and SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

Served:

A True Copy

TEST:

/s/ Thomas D. Hall
Thomas D. Hall
Clerk, Supreme Court [SEAL]
bh
Served:

RICHARD B. LISS
KEVIN P. TYNAN
DAVID M. BARNOVITZ
CHARLES F. KLINE

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR
Complainant,

v.

ANTHONY ELADIO RAMOS,
Respondent.
_____/

Supreme Court Case No. 89,797

The Florida Bar File Nos. 95-50,681(15C), 95-51,579(15C) 96-50,064(15C), 96-50,125(15C), 96-50,223(15C), 96-50,257(15C), 96-50,762(15C), 96-50,783(15C), 96-50,965(15C), 96-51,300(15C), 96-61,502(15C), 96-51,643(15C), 96-51,717(15C), 97-50,382(15C), 97-50,408(15C), 97-50,447(15C), and 97-50,450(15C)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

The Florida Bar's formal complaint ("complaint") in this cause was filed on January 28, 1997. Thereafter, on February 5, 1997, the undersigned was appointed to preside as referee in this proceeding by order of the Chief Justice of the Supreme Court of Florida.

After several unsuccessful attempts to serve its complaint upon respondent at his record Bar address, The Florida Bar attempted to effect service at respondent's

residence. As reflected in Staff Investigator Lawrence Coutre's affidavit (which is attached to The Florida Bar's motion to compel respondent to accept service of process), respondent refused to accept service of the complaint and ordered Mr. Coutre off his property. Ultimately, the service issue became moot when respondent was unwillingly served with the complaint on March 21, 1997, by a sheriff's deputy.

On March 27, 1997, respondent (through counsel) filed a motion requesting an extension of thirty (30) days after the date for which a responsive pleading was due. On April 21, 1997, the Bar filed a motion for judgment on default. On May 5, 1997, respondent (through counsel) filed a motion to dismiss and strike the Bar's complaint. Since a responsive pleading had been filed (the motion to dismiss), the Bar withdrew its motion for judgment upon default. Thereafter, the Bar renewed its motion for default. By order entered on June 17, 1997, the Bar's motion for default was denied. By order also entered on June 17, 1997, respondent's motion to dismiss was denied, and he was directed to serve his answer within thirty (30) days of the date of the order. On July 16, 1997, respondent (through counsel) gave notice that he was appealing (to the Supreme Court of Florida) the order denying his motion to dismiss. Predicated upon respondent's failure to serve an answer as directed in the June 17, 1997, order, and the improper manner in which the appeal was noticed, the Bar filed another motion for judgment on default on July 30, 1997. By order entered on September 22, 1997, the Supreme Court of Florida granted the Bar's motion to dismiss respondent's appeal and dismissed his notice of appeal. On September 23,

1997, an agreed order was entered whereby the Bar's motion for default was denied and respondent directed to file his answer by September 30, 1997. When respondent failed to serve his answer, the Bar filed a renewed motion for default on October 27, 1997. As can be seen from this partial recitation of procedural history, respondent was given numerous opportunities to file an answer to the Bar's complaint and chose not to do so. Accordingly, the Bar's renewed motion for default was granted during the course of a telephone hearing conducted on October 29, 1997, with the formal order entered on November 3, 1977. A hearing on appropriate disciplinary sanction then followed on November 10, 1997. Although he had actual notice of this hearing, respondent chose not to appear or be represented by counsel.

Comment also needs to be made on respondent's attempted resignation and its impact on these proceedings. By letter dated November 1, 1997, to The Florida Bar, c/o Charles F. Kline, Esq., respondent stated as follows:

> In order that I may pursue other business interests, my membership in The Florida Bar is no longer necessary. I am accordingly resigning from The Florida Bar effective November 1, 1997.
>
> It has been my distinct pleasure and honor to have served as an officer of the Court.

The effect of respondent's postdated resignation letter upon jurisdiction to continue disciplinary proceedings was argued during the course of the telephone hearing conducted on October 29, 1997. Mr. Kline stated that his client believed a resignation in the manner presented

served to divest the referee and the Supreme Court of Florida of any further jurisdiction. Since respondent has refused to comply with R. Regulating Fla. Bar 3-7.12 and submit a disciplinary resignation, respondent's resignation must be considered a nullity under the authority of *The Florida Bar v. Segal,* 663 So.2d 618 (Fla. 1995).

The pleadings and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings, respondent was represented by Charles F. Kline, Esq., with whom he acted as co-counsel. Mr. Kline's motion to withdraw was conditionally granted during a telephone hearing conducted on November 7, 1997. The *Florida Bar* was represented by *Richard B. Liss, Esq.,* and *Kevin P. Tynan, Esq.*

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT WITH WHICH RESPONDENT IS CHARGED:

By reason of the order on renewed motion for default previously entered in this cause, each and every factual allegation made by The Florida in its complaint was deemed to be admitted. Rather than recite these allegations in their entirety, they are incorporated herein by reference as if fully set forth. Salient findings of fact (based upon the record before me which includes testimony presented at the hearing conducted on November 10, 1997) are as follows:

IN GENERAL

1. Respondent is, and at all times hereinafter mentioned was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

* * *

(Fla. 1994), prior discipline (two public reprimands) coupled with lying about the reason for nonappearances at a scheduled pretrial conference and the trial in a divorce action resulted in disbarment. In *The Florida Bar v. Colclough*, 561 So.2d 1147 (Fla. 1990), a six (6) month suspension was imposed for making misrepresentations in a lawsuit to the court and opposing counsel. Finally, in *The Florida Bar v. Oxner*, 431 So.2d 983 (Fla. 1983), a sixty (60) day suspension was ordered for lying to the trial judge in order to obtain a continuance.

Notwithstanding the requirements of R. Regulating Fla. Bar 3-4.8 and 4-8.4(g), respondent failed to provide a response to a Florida Bar investigative inquiry pertaining to alleged forgeries of client signatures on multiple releases. Violation of these rules was considered in *The Florida Bar v. Grosso*, 647 So.2d 841 (Fla. 1994) and resulted in a ten (10) day suspension.

When warranted by the nature and extent of the ethical violations found, the Supreme Court of Florida has not hesitated to order a term of disbarment far greater than the minimum period of five (5) years set forth in R. Regulating Fla. Bar 3-5.1(f). See *The Florida Bar v. de la Puente*, 658 So.2d 66 (Fla. 1995) (ten (10) year disbarment); *The Florida Bar v. Newhouse*, 539 So.2d 473

(Fla. 1989) (twenty (20) year disbarment); *The Florida Bar v. Simons*, 521 So.2d 1089 (Fla. 1988) (twenty (20) year disbarment); *The Florida Bar v. Newhouse*, 520 So.2d 25 (Fla. 1988) (ten (10) year disbarment); and *The Florida Bar v. Nagel*, 440 So.2d 1287 (Fla. 1983) (ten (10) year disbarment).

As was the case in *de la Puente*, respondent has engaged in several actions (misappropriation of client funds and forgery) which, when considered alone, create a presumption of disbarment. In addition, respondent has engaged in a myriad of other unethical conduct (failure to obey court order, lack of candor to a tribunal, misrepresentations to opposing counsel regarding settlement documents, misrepresentation to predecessor counsel regarding status of funds retained in trust account to protect attorney's fee lien, making false certifications to The Florida Bar regarding compliance with trust accounting rules, misrepresentations to the Clients' Security Fund, collecting clearly excessive fees, failure to maintain the minimum trust accounting records and observe the minimum trust accounting procedures required by the the Rules Regulating Trust Accounts, failure to obtain signed closing statements from clients, falsely stating on a client's closing statement that certain items of cost had been paid, representing a client without authority, and failure to respond to a Florida Bar investigative inquiry) which would warrant disbarment several times over. Finally, respondent has brought into play almost every aggravating factor in The Florida Standards. After considering the totality of the circumstances presented, I was compelled to conclude that an enhanced disbarment for a

period of twenty (20) years was the appropriate disciplinary sanction to recommend.

* * *

fees for translation services, witness expenses, and travel and out-of-pocket expenses of counsel). Upon submission of a supplemental sworn statement of costs to the Supreme Court of Florida, it is recommended that the additional costs stated therein also be taxed against respondent.

Dated this 12th day of November, 1997.

/s/ /s/ Howard H. Harrison Jr.
HOWARD H. HARRISON, JR.,
REFEREE

Copies furnished to:

Richard B. Liss and Kevin P. Tynan, Bar Counsel
Anthony Eladio Ramos, Respondent